

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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| ALLEN L. ("GLUE") WILKINS, |) | Case No. 3:08-cv-185 |
| |) | |
| Petitioner, |) | JUDGE KIM R. GIBSON |
| |) | |
| v. |) | |
| |) | |
| KENNETH R. CAMERON, <i>et al.</i> , |) | |
| |) | |
| Respondents. |) | |
| |) | |
| |) | |

MEMORANDUM ORDER

Petitioner Allen L. ("Glue") Wilkins ("Petitioner") is a Pennsylvania state prisoner currently incarcerated at the State Correctional Institution at Houtzdale ("SCI-Houtzdale"). He has been in the Pennsylvania Department of Corrections' custody since 2003. (ECF No. 1 at 1).

Petitioner filed a habeas corpus petition on July 23, 2008. (ECF Nos. 1, 2). The Court denied this petition on November 29, 2010. (ECF No. 60). In 2011, Petitioner filed an application to file a second habeas corpus petition that was also denied. *See In Re: Allen Wilkins*, No. 11-4548 (3d Cir. Feb. 17, 2012).

On January 12, 2022, Petitioner filed a "Motion for Relief from Judgment and Order [Under] Rule 60(b)." (ECF No. 61). In this motion addressed to the Honorable Patty Schwartz (a judge sitting on the United States Court of Appeals for the Third Circuit), Petitioner requested "immediate release . . . from unlawful imprisonment" based on the Third Circuit's decision in *Satterfield v. Dist. Att'y Philadelphia*, 872 F.3d 152, 155 (3d Cir. 2017).

On January 14, 2022, Magistrate Judge Keith A. Pesto denied Petitioner's motion at ECF No. 61 without prejudice. (ECF No. 62). The Magistrate Judge instructed Petitioner that, "if petitioner intended the motion for this court, he can refile it, explaining why it is a true motion under Rule 60(b) and not a repeated attempt to file a petition that requires prior authorization from the Court of Appeals." (*Id.* at 2).

On January 18, 2022, Petitioner appealed Magistrate Judge Pesto's order at ECF No. 62 to the Third Circuit. (ECF No. 64). He again appealed this order to the Third Circuit on January 25, 2022. (ECF No. 68). Finally, on May 11, 2022, Petitioner properly appealed the Magistrate Judge's order to this Court. (ECF No. 93).¹

During that period—specifically, on January 28, 2022—Petitioner filed a second "Motion for Relief from Judgment and Orders [Under] Rule 60(b)." (ECF No. 69). In this motion, Petitioner makes the same requests as he made in his earlier motion at ECF No. 61. (*See id.*). On February 24, 2022, Magistrate Judge Pesto again denied Petitioner's Rule 60 motion. (ECF No. 71). Petitioner properly appealed this denial to this Court on March 3, 2022. (ECF Nos. 72).² On August 2, 2022, the Court affirmed Magistrate Judge Pesto's order at ECF No. 71. (ECF No. 103).

On August 6, 2022, Petitioner appealed the Court's order at ECF No. 103 to the Third Circuit. (ECF No. 106). On September 23, 2022, the Third Circuit remanded this matter and instructed the Court to either issue a certificate of appealability or state reasons why a certificate of appealability should not issue. (ECF No. 109).

¹ Petitioner remedied his filing error just before the Third Circuit dismissed Petitioner's appeals to it on May 13, 2022, citing lack of jurisdiction. (ECF No. 94).

² Petitioner supplemented this appeal on March 10, 2022. (ECF No. 86).

On September 26, 2022, Magistrate Judge Pesto filed a Report & Recommendation (“R&R”) recommending that the Court determine that a certificate of appealability should not issue. (ECF No. 110). In the R&R, the Magistrate Judge stated reasons why a certificate of appealability should not issue. (*Id.* at 2–3). He also informed the parties of their respective deadlines for filing written objections. (*Id.* at 3).³ Petitioner timely filed his objections to the R&R on October 12, 2022, (ECF Nos. 112, 113), and later filed a corrected version of these objections on October 19, 2022. (ECF No. 114). The Court has reviewed Petitioner’s objections and finds them meritless.

Upon de novo review of the record in this matter, Magistrate Judge Pesto’s R&R at ECF No. 110, and Petitioner’s objections to the R&R at ECF Nos. 112–114, the following order is entered.

AND NOW, this 31st day of October, 2022, it is **HEREBY ORDERED** that Magistrate Judge Pesto’s R&R at ECF No. 110 is adopted as the Opinion of the Court for its reasoning and conclusion.

IT IS FURTHER ORDERED that issuance of a certificate of appealability is **DENIED**.

³ The parties had different deadlines for submitting written objections because Respondents are electronically registered and Petitioner is not. As an electronically registered party, Respondents had until October 11, 2022, to file objections. (ECF No. 110). As a non-registered party, Petitioner had until October 13, 2022, to file objections. (*Id.*).

BY THE COURT:

A handwritten signature in black ink, appearing to read "Kim R. Gibson". The signature is written in a cursive, flowing style with some capitalization. It is positioned above a solid horizontal line.

KIM R. GIBSON
UNITED STATES DISTRICT JUDGE